Supreme Court, U.S.
FILED
DEC 3 1992
OFFICE OF THE CLERK

92-972
No. _____

IN THE
Supreme Court of the United States

October Term, 1992

SOUTHERN SLIP FORM SERVICES, INC.
Petitioner

versus

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR A WRIT OF CERTIORARI

MURPHY J. FOSTER, III, T.A.

BREAZEALE, SACHSE & WILSON
23rd Floor, One American Place
Post Office Box 3197
Baton Rouge, Louisiana 70821-3197
Telephone: (504) 387-4000

Counsel for Petitioner,
Southern Slip Form Services, Inc.

Franklin Press, Inc. • Baton Rouge, Louisiana

QUESTIONS PRESENTED

1. When the Congress provides in the enabling legislation for deference to state sovereignty, the President by executive order directs federal agencies to interpret their regulations to avoid preemption of state law unless the contrary is specifically mandated by the Congress, and the specific federal regulations require compliance with state law and regulations, do those federal regulations preempt state law and regulations?

2. Must a court consider and render findings consistent with this Court's preemption analysis before concluding that federal law preempts state law.

TABLE OF CONTENTS

Page:

Questions Presented i

Table of Contents ii

Table of Authorities iii

Opinions Below 2

Jurisdiction 2

Statement of the Case 2

Argument and Reasons for Granting the Writ 4

Conclusion 7

Proof of Service 8

Appendix A - Judgment of the Supreme Court of Louisiana A-1

Appendix B - Opinion of the Court of Appeal, First Circuit, State of Louisiana B-1

Appendix C - Judgment of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana C-1

Appendix D - Pertinent Statutes, Regulations, and Executive Order D-1

TABLE OF AUTHORITIES

Cases: **Pages:**

Arkansas-Platte and Gulf Partnership v. Dow Chemical Co., 61 U.S.L.W. 3284 (U.S. October 13, 1992) 1

Bowen v. Doyal, 259 La. 839, 253 So.2d 200 (1971) 3

California Coastal Commission v. Granite Rock Company, 480 U.S. 572, 107 S.Ct. 1419, 94 L.Ed. 2d 577 (1987) 6

California Federal Savings & Loan Association v. Guerra, 479 U.S. 272, 280, 107 S.Ct. 683, 689, 93 L.Ed. 2d 613 (1987) 5

Cipollone v. Liggett Group, Inc., 60 U.S.L.W. 4703 (U.S. June 24, 1992) 1, 5

R. J. Reynolds Tobacco Company v. Durham County, North Carolina, 479 U.S. 130, 140, 107 S.Ct. 499, 507, 93 L.Ed. 2d 449 (1986) 5

Statutes:

23 U.S.C. § 145 4

28 U.S.C. § 1257 2

49 C.F.R. Part 23 5

Executive Order No. 12612, 52 F.R.D. 41685 6

Louisiana Constitution, Article I § 22 3

Louisiana Constitution, Article VII § 27 4

La. R.S. 48:234 ..... 2, 4

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

SOUTHERN SLIP FORM SERVICES, INC.
Petitioner

versus

LOUISIANA DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioner prays for a writ of certiorari to review the judgment of the Supreme Court of Louisiana, to have the state court decisions reversed and vacated or to have the instant case remanded for new proceedings consistent with the decisions in *Cipollone v. Liggett Group, Inc.*, Docket No. 90-1038, 60 U.S.L.W. 4703 (U.S. June 24, 1992) and *Arkansas-Platte and Gulf Partnership v. Dow Chemical Co.*, Docket No. 92-203, 61 U.S.L.W. 3284 (U.S. October 13, 1992).

[1] There is no parent or subsidiary company of Southern Slip Form Services, Inc. All parties are identified in the caption of this case.

OPINIONS BELOW

The denial of application for writ of certiorari and review to the Supreme Court of the State of Louisiana is reproduced in Appendix A. The opinion of the Court of Appeal for the First Circuit, State of Louisiana, is reproduced in Appendix B. The judgment of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, is reproduced in Appendix C.

JURISDICTION

The judgment of the Court of Appeal for the First Circuit, State of Louisiana, was entered on April 13, 1992. The application for writ of certiorari and review was timely filed with the Louisiana Supreme Court on May 13, 1992. That application was denied on September 4, 1992. The jurisdiction of this Honorable Court to review said denial is invoked pursuant to 28 U.S.C. § 1257.

STATEMENT OF THE CASE

Southern Slip Form Services, Inc. ("Southern Slip Form"), a Louisiana corporation, entirely owned and operated by women, made application on December 29, 1989 to the Louisiana Department of Transportation and Development ("LDOTD") for certification as a Woman's Business Enterprise ("WBE") to participate in the Louisiana State Highway Set-Aside Program, as established under La. R.S. 48:234. On June 9, 1990, LDOTD issued its formal, "*final*" decision denying the WBE application, and thereafter your Petitioner filed its original petition seeking judicial review asserting that the administrative decision was

arbitrary and capricious. LDOTD responded with various exceptions asserting that Southern Slip Form had no right to judicial review at the state level because the federal regulations provide the exclusive review mechanism available. Southern Slip Form has consistently argued that review by a Louisiana District Court is guaranteed by the Louisiana Constitution when a citizen is adversely affected by a final ruling at the highest administrative level of state government directed by the Louisiana Legislature to administer a Louisiana program funded by Louisiana taxpayers' money.

The Louisiana district court denied LDOTD's exceptions based, in part, upon the failure of the LDOTD to adopt any regulations regarding WBE certification as *mandated* by the Louisiana legislature. LDOTD filed a Motion for New Trial which was denied by the district court after considering the broad right to appeal from an adverse administrative decision as granted under Louisiana Constitution Article 1, § 22 as interpreted by the Louisiana Supreme Court in *Bowen v. Doyal*, 259 La. 839, 253 So.2d 200 (1971). The Court of Appeal for the First Circuit, State of Louisiana, granted respondent's Application for Supervisory Writs of Certiorari and dismissed the entire proceedings for lack of subject matter jurisdiction. The Court of Appeal determined, despite the mandate of the Louisiana Legislature to establish a state funded set-aside program and establish rules for its administration, that the LDOTD could ***not*** promulgate its own rules as they would be preempted by the federal regulations. Petitioner then applied to the Supreme Court of Louisiana for writs of certiorari and review which application was denied without reasons. It is from this denial which petitioner now seeks review. No trial on the merits has ever been conducted.

ARGUMENT

1. THE FEDERAL REGULATIONS DO NOT PREEMPT STATE LAW

The fundamental issue in this case is whether the federal regulations regarding the certification of minority and women business enterprises for the purpose of participating in the Federal Highway Set Aside Program preempt state law concerning a State Highway Set Aside Program. The undisputed fact in this case is that the LDOTD has never adopted any rules or regulations whatsoever for the administration of the Louisiana State Set Aside Program as mandated under La. R.S. 48:234. The Louisiana Court of Appeal concluded that, despite this express statutory directive, the LDOTD is precluded from promulgating the legislatively mandated regulations because the federal regulations completely occupy the field and preempt state law in this area.

The conclusion by the Louisiana Court of Appeal totally ignores that most roads and bridges constructed in Louisiana are financed exclusively with State funds derived primarily from a gasoline tax on Louisiana citizens and deposited in the Louisiana Transportation Trust Fund as established by Louisiana Constitution Article VII, § 27.[1] The ruling also ignores federal law preserving to the states their sovereign right to determine which projects shall be federally financed. 23 U.S.C. § 145. Thus, even if the federal regulations preempt state

[1] The percentage of federal highway funds in LDOTD's budget is minimal. In 1990, federal funds totaled 3.12% (Act 21, 1990 Regular Session); in 1991, federal funds totaled 1.77% (Act 12, 1991 Regular Session); in 1992, federal funds totaled 2.81% (Act 13, 1992 Regular Session).

law for federally assisted state highway programs, which they do not, certainly Louisiana may administer its own, purely state funded projects. However, the ruling below decrees *all* highway projects to be the exclusive province of federal law. This surely was not the intent of Congress.

The federal regulations themselves clearly evidence that no preemption of state law was ever intended. In particular, 49 CFR Part 23, §§ 23.45, 23.51 and 23.69 specifically envision state set aside regulations and require potential minority and WBE contractors on federally assisted projects to submit to the state certification process if one exists.

This Honorable Court has on previous occasions examined the potential preemption of state law by federal regulations. The Court has consistently ruled that federal regulations "should not be deemed preemptive of state regulatory power in the absence of persuasive reasons – either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained." *R. J. Reynolds Tobacco Company v. Durham County, North Carolina*, 479 U.S. 130, 140, 107 S.Ct. 499, 507, 93 L.Ed. 2d 449 (1986). In determining whether a state statute is preempted by federal law and therefore invalid under the Supremacy Clause of the Constitution, the Court's sole task is to ascertain the intent of Congress. *California Federal Savings & Loan Association v. Guerra*, 479 U.S. 272, 280, 107 S.Ct. 683, 689, 93 L.Ed. 2d 613 (1987). However, where the language of the federal statute unambiguously preserves the sovereign rights of the states to enact similar law and the federal regulations require compliance with State law, (if it exists) the inquiry should stop since Congressional intent not to preempt is clear. *Id.*, 107 S.Ct. at 690; *Cipollone v. Liggett Group, Inc.*, 60 U.S.L.W. 4703, 4706-4707 (U.S. June 24, 1992).

In *California Coastal Commission v. Granite Rock Company*, 480 U.S. 572, 107 S.Ct. 1419, 94 L.Ed. 2d 577 (1987), this Honorable Court held that the federal regulations did not displace California's sovereign right to impose permit requirements, "because Congress specifically disclaimed any intention to preempt pre-existing state authority . . ." *Id.*, 107 S.Ct. at 1431.

In the present case, federal law permits the State to choose which projects will receive federal funds. Certainly, on those projects financed exclusively by State money, the federal regulations here at issue cannot control. For those projects which are partially financed by federal funds, the federal regulations specifically require compliance with state regulations, if they exist. In light of the obvious intent to permit state regulation, no federal preemption in this area is possible.

Furthermore, by Executive Order No. 12612 issued by President Ronald Reagan on October 26, 1987, 52 F.R. 41685, the President of the United States directed all federal administrative agencies to interpret their regulations, with respect to national policies administered by the states, to "grant the states the maximum administrative discretion possible." *Id.* at § 3(c).

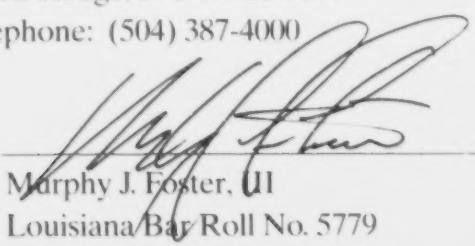
This Honorable Court cannot permit the decision of the Louisiana Appellate and Supreme Court to stand, for if it does, then not only would the law on federal preemption be wholly rewritten, but the practical effect would be to challenge every individual State Highway Set Aside Program throughout the country, *not* on the merits or justification for the program, but as preempted by federal law. Certainly, the immediate impact of the decision below prohibits the State of Louisiana from exercising its sovereign right to establish laws and regulations, but the ultimate impact can be nationwide.

CONCLUSION

This Honorable Court must not place its stamp of approval upon a decision which is not only contrary to the clear pronouncements of this Court on the limited nature of federal preemption, but which would also have a devastating effect nationwide. This case is *not* about the legality of a particular state program but, instead, goes to the central issue of whether a state has the sovereign right to enact its own Highway Set Aside Programs at all. Southern Slip Form Services, Inc. respectfully prays that this writ application be granted, and after due proceedings that this Honorable Court vacate the decision of the state courts below, and remand these proceedings for a trial on the merits. At a minimum, remand is appropriate for a thorough consideration of this Honorable Court's most recent expression of preemption analysis.

BY ATTORNEYS:

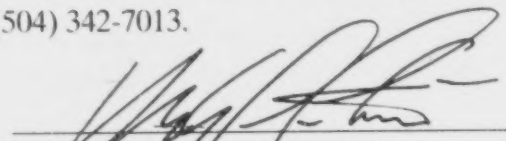
BREAZEALE, SACHSE & WILSON
23rd Floor, One American Place
P. O. Box 3197
Baton Rouge, LA 70821-3197
Telephone: (504) 387-4000

By: 

Murphy J. Foster, III
Louisiana Bar Roll No. 5779

PROOF OF SERVICE

I, Murphy J. Foster, III, attorney for Southern Slip Form Services, Inc., Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that three (3) copies of the above and foregoing Petition for Writ of Certiorari, and its appendices, has been sent this date, United States Mail, postage prepaid and properly addressed, to: The Louisiana Department of Transportation & Development, respondent in connection with this Petition for Writ of Certiorari, through its counsel of record, Mr. William J. Doran, Jr., Special Assistant to General Counsel, State of Louisiana, Department of Transportation & Development, 704 S. Foster Drive, Baton Rouge, Louisiana 70806-5995, phone (504) 924-4284; and to the Attorney General of the State of Louisiana, Mr. Richard P. Ieyoub, P.O. Box 94005, Baton Rouge, Louisiana 70804-9005, phone (504) 342-7013.



Murphy J. Foster, III
Louisiana Bar Roll No. 5779

APPENDICES

APPENDIX A

THE SUPREME COURT OF THE STATE OF LOUISIANA

SOUTHERN SLIP FORM SERVICES INC.

vs

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
No. 92-CC-1403

IN RE: Southern Slip Form Serv. Inc.; — Plaintiff (s); Applying for Supevisory and/or Remedial Writs; to the Court of Appeal, First Circuit, Number CW91 2050; Parish of East Baton Rouge 19th Judicial District Court Div. "J" Number 360,046

September 4, 1992

Denied.
JCW
PFC
WFM
JLD
HTL
LFC
PH

Supreme Court of Loisiana
September 4, 1992

/s/ Frank L. Breaud, Jr.
Clerk of Court
For the Court

APPENDIX B

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

SOUTHERN SLIP FORM SERVICES, INC.,

VERSUS

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

NO. CW 91 2050

IN RE: The Louisiana Department of Transportation and Development applying for alternative supervisory writs of certiorari and or review, 19th Judicial District Court, Parish of East Baton Rouge, Docket No. 360, 046.

WRIT GRANTED.

The judgment overruling the objection of lack of subject matter jurisdiction is hereby reversed, and judgment is entered in the relator's favor dismissing the suit in the lower court. The plaintiff filed its application for certification as a Woman's Business Enterprise as defined in the Code of Federal Regulations. Therefore, the plaintiff is subject to the rules, regulations and standards set forth in the Code by the Federal government. 49 CFR § 22.35 specifically states that an appeal from a decision of a DOT financial recipient denying certification is to be taken to the U.S. DOT. The relator does not have the power to promulgate rules which would change that procedure, and its decision to deny certification is not a final adjudication; therefore, the state district court does not have subject matter jurisdiction to review the Louisiana Department of

Transportation and Development's decision to deny certification.

Denial of certification under the CFR was the only issue properly before the district court through the allegations of the petition. The allegations in the amended petition did not culminate in a prayer that the Louisiana Department of Transportation and Development be ordered to promulgate rules, regulations and standards under which the plaintiff might be deemed to qualify and be certified as a Woman's Business Enterprise pursuant to La. R.S. 48:234; therefore, the suit would not have resolved the issue of whether or not the plaintiff could be certified as a Woman's Business Enterprise under a state program. There are no justiciable issues to be decided in the lower court, and for that reason the entire suit is dismissed for lack of subject matter jurisdiction. Because the suit is dismissed for lack of subject matter jurisdiction, the issue of prematurity for failure to exhaust administrative remedies is moot.

FF
JLW
BJC

COURT OF APPEAL, FIRST CIRCUIT

/s/ Karen West
Deputy Clerk of Court
For the Court

APPENDIX C

SOUTHERN SLIP-FORM SERVICES, INC.

VERSUS

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

NUMBER 360,046 DIV. "E"

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

JUDGMENT ON DEFENDANT'S EXCEPTIONS

This matter came for hearing on June 14, 1991, pursuant to Exceptions of Prematurity, Lack of Jurisdiction, Nonjoinder of Indispensable Parties and No Cause of Action filed on behalf of Defendant, Louisiana Department of Transportation and Development. Pesent in court were William J. Doran, Jr., counsel for Louisiana Department of Transportation and Development, and Murphy J. Foster, III, counsel for plaintiff, Southern Slip-Form Services, Inc. Considering the oral argument of counsel, the briefs and evidence presented and for oral reasons stated in open court;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Exceptions filed by Defendant, Louisiana Department of Transportation and Development, are hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Louisiana Department of Transportation and Development pay all costs associated with this proceeding.

JUDGMENT RENDERED in open court on June 14, 1991.

JUDGMENT READ AND SIGNED in chambers on this 30th day of July, 1991.

July 29, 1991

/s/ Jan Dickerson
Deputy Clerk of Court

/s/ L.J. Hymel
Judge, 19th Judicial District Court

I hereby certify that on this day a notice of the above judgment was mailed by me, with sufficient postage affixed, to William Doran, Murphy Foster, III

Done and signed on July 30, 1991

/s/ Jan Dickerson
Deputy Clerk of Court

APPENDIX D

PERTINENT STATUTES AND REGULATIONS

La. R.S. 48:234. Highway Construction; Authority for Set Aside Procurement from Socially or Economic Disadvantaged or Women-Owned Businesses.

A. The secretary is hereby authorized and directed for each fiscal year, to designate and set aside for awarding to socially or economically disadvantaged and/or women-owned businesses, as defined in R.S. 39:1732(4), and (5), an amount not to exceed 10% of the funds appropriate for highway construction and for procurement of goods and services for highway construction. This Subsection shall be inapplicable if no socially or economically disadvantaged and/or women owned business exists in the particular category to which the set aside applies.

B. The secretary shall, for each fiscal year, designate and set aside for awarding to socially or economically disadvantaged and/or women owned businesses, an amount not to exceed 10% of the funds appropriated for highway construction and for procurement for goods and services for highway construction. This Subsection shall be inapplicable if no socially or economically disadvantaged and/or women owned business exists in the particular category to which the set aside applies.

C. In order to implement the provisions of this Section, the secretary shall adopt rules, standards and procedures for certifying that businesses owned and operated by socially or economically disadvantaged persons or women are eligible to participate under the requirements of this Section. The procedure for determination of eligibility may include self-certification by a business, provided that the secretary retains the ability to verify a self-certification. Other rules as may be necessary to carry out the duties set forth in this Section may also be adopted.

D. Providing, however, the total amount for the set-aside program shall not exceed 10% of the state and federal funds allocated for highway construction.

23 U.S.C. § 145: Federal and State Relationship.

The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. The provisions of this chapter provide for a federally assisted State program.

Pertinent portions of Executive Order no. 12612 issued by President, Ronald Reagan on October 26, 1987, 52 F.R.D. 41685.

By the authority vested in me, as President by the Constitution and laws of the United States of America and in order to restore the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution and to insure that the principles of federalism established by the Framers guide the Executive departments and agencies in the formulation and implementation of policies, it is hereby ordered as follows: . . .

SEC 4. Special Requirements for Preemption.

(a) To the extent permitted by law, Executive departments and agencies shall construe in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), Executive department and agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption

of State law by rule-making only when the statute expressly authorizes issuance of preemptive regulations or there is some other firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the department or agency the authority to issue regulations preempting State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) As soon as an Executive department or agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the department or agency shall consult, to the extent practicable, with appropriate officials and organizations representing the States in an effort to avoid such a conflict.

(e) When an Executive department or agency proposes to act through adjudication or rule-making to preempt State law, the department or agency shall provide all effective states notice and an opportunity for appropriate participation in the proceedings.

Pertinent provisions of 49 C.F.R. Part 23.

Section 23.45: Required MBE Program Components.

(a) A policy statement, expressing a commitment to use MBEs in all aspects of contracting to the maximum extent feasible. (1) The applicant's policymaking body (Board, Council, etc.) shall issue a policy statement signed by the chairperson, which expresses its commitment to the program, outlines the various levels of responsibility and states the objectives of the program. The policy statement shall be circulated throughout the applicant's organization and to minority, female and nonminority community and business organizations. . . .

(k) Procedures by which the applicant/recipient will implement MBE set-asides. Where not prohibited by state or local

law and determined by the recipient to be necessary to meet MBE goals, procedures to implement MBE set-asides shall be established. MBE set-asides shall be used only in cases where at least 3 MBEs with capabilities consisted with contract requirements exist so as to permit competition.

Section 23.51 – Certification of the Eligibility of Minority Business Enterprises.

(a) To ensure that this part benefits only MBEs which are owned and controlled in both form and substance by one or more minorities or women, DOT recipients shall use schedules A and B (reproduced at the end of this part) to certify firms who wish to participate as MBEs in DOT under this part.

. . .

(c) Under the following circumstances, a business seeking to participate as an MBE under this subpart need not submit schedule A or B: (1) If a DOT recipient has established a different certification process that DOT has determined to be as or more effective than the process provided for by this section. Where such a process exists, potential MBE contractors shall submit the information required by the recipient's process.

Section 23.69 — Challenge Procedure.

(a) Each recipient is required to establish an overall goal under Section 23.64 shall establish a challenge procedure consistent with this Section to determine whether an individual presumed to be socially and economically disadvantaged as provided in Section 23.62 is in fact socially or economically disadvantaged.

No. 92-972

Supreme Court, U.S.
FILED
DEC 31 1992
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1992

SOUTHERN SLIP FORM SERVICES, INC.
Petitioner

versus

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

WILLIAM J. DORAN, JR.,T.A.

NORMAN L. SISSON, General Counsel

SHARON F. LYLES
WILLIAM J. DORAN, JR.
704 South Foster Drive
Baton Rouge, Louisiana 70806-5995
Telephone: (504) 924-4284

Counsel for Respondent,
State of Louisiana, Department of Transportation and Development

---

Franklin Press, Inc. • Baton Rouge, Louisiana

TABLE OF CONTENTS

Page:

Statement of the Case 1
Argument 2
Conclusion 6
Proof of Service 7
Appendix A A-1
Appendix B B-1
Appendix C C-1

TABLE OF AUTHORITIES

Cases: **Page:**

LPG Construction Company, Inc.
v. Pennsylvania Department of Transportation
501 A. 2d 360 (1985) 3

Central Ohio Waterproofing Company
v. Smith, 521 N.E. 2d 1133 (C.A. - Ohio, 1987) 5

Statutes:

La. R.S. 48:234 1

49 C.F.R. 23.55 1

49 C.F.R. Part 23 2

No. 92-972

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

SOUTHERN SLIP FORM SERVICES, INC.
Petitioner

versus

LOUISIANA DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT
Respondent

BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI FILED BY SOUTHERN SLIP FORM SERVICES, INC.

STATEMENT OF THE CASE

Respondent generally agrees with the factual statements in petitioner's Statement of the Case, except that it denies that the application for certification as a Women's Business Enterprise was filed under the provisions of Louisiana R.S. 48:234. The application was filed under the provisions of 49 CFR 23.55. The rejection of petitioner's application was a final decision under State law and was a recommendation for rejection which

could be appealed to the Secretary of the United States Department of Transportation. The applicant was advised of this right to appeal by letter dated July 9, 1990 which was introduced as Exhibit "A" in the Trial Court proceedings, a copy of which is attached to this brief as Appendix "A." The decision to recommend that this firm not be certified as a Women's Business Enterprise was a final decision at the State level, but was not final administrative action. It was a decision made pursuant to the Code of Federal Regulations and was appealable under the Code of Federal Regulations as set forth in the letter. The application of Southern Slip Form Services, Inc. clearly indicated that this was an application to be certified as to eligibility pursuant to 49 CFR part 23. A copy of the instructions for application and the application was attached to respondent's Application for Certiorari to the Court of Appeal, First Circuit of the State of Louisiana and a copy of that application is attached hereto as Appendix "B" of this brief. Louisiana has not adopted any separate regulations for certification with regard to purely State projects as found by the Louisiana Court of Appeal, First Circuit in its decision which appears at Page B-1 of Appendix "B" of applicant's brief (See Appendix "C").

ARGUMENT

The Writ Application of petitioner's should be denied. The facts in the case indicate that Louisiana has never adopted regulations pursuant to the statutory authority cited in petitioner's brief and further indicate that the entire application was made under the Code of Federal Regulations. The letter advising the petitioner of the rejection of its application by the Certification Committee of the Department of Transportation and Development clearly indicated that the appeal should be directed to Mr.

Samuel Skinner, Secretary, Department of Transportation, 400 Seventh Street, SW, Room 10200, Washington D. C. 20590 and further indicated that the appeal had to be made within one hundred and eighty (180) days.

Petitioners chose not to continue to pursue their administrative remedies but to attempt to have a judicial review of a decision made under the Code of Federal Regulations by State Court and therefore failed to exhaust their administrative remedies.

The record clearly shows that the plaintiff was advised of its appeal rights to the United States Department of Transportation. The Code of Regulations 49 CFR 23.55 specifically provides a right of appeal from State action. Until the Federal Department of Transportation takes final action there is no appealable action. The only avenue of appeal for a person who is denied certification by a State Committee under the regulations as provided by the Code of Federal Regulations is to the United States Department of Transportation. This should be the final agency action at which time petitioners would have a right to appeal to the United States District Court if the final decision of the United States Department of Transportation was adverse to them.

Although there are apparently no Louisiana cases on this particular point, there are two cases from other states which are squarely in point and which support the position of the Louisiana Department of Transportation and Development in this matter. In *LPG Construction Company, Inc. v. Pennsylvania Department of Transportation*, 501 A. 2d 360 (1985) a contractor was denied Minority Business Enterprise certification by the Pennsylvania Department of Transportation and attempted to

appeal directly to the State Court of Pennsylvania under the Administrative Procedure Law. The Pennsylvania Court held that the denial of the Minority Business Enterprise certification was subject to further administrative review by the United States Department of Transportation pursuant to 49 CFR 23.55 and held that the State agency's decision was not a final administrative order and therefore not appealable under the Administrative Procedure Act. The Court found that the Pennsylvania Department of Transportation's denial of the application for Minority Business Enterprises certification was not conclusive since the plaintiff had a right to appeal to the United States Department of Transportation under the provisions of 49 CFR 23.55. The Court stated that the administrative actions are adjudicatory in character only when they culminate in a final determination affecting personal or property rights and since the Pennsylvania Department of Transportation's action did not finally dispose of appellant's application for Minority Business Enterprise certification, there was no adjudication from which an appeal could be taken to the Pennsylvania State Courts. The Court also noted that a person dissatisfied with the ruling of the United States Department of Transportation had a right to judicial review in the Federal Courts. The Court stated as follows:

> "We further note that in a case such as this, there will never be adjudication appealable to this Court. In the event Appellant exercises its right to appeal to the U.S. DOT under 49 CFR Section 23.55, the final decision of the U.S. DOT will be a final order of federal agency, not a Commonwealth agency. Since our jurisdiction limits our review of adjudications of Commonwealth agencies, should appellant be dissatisfied with the result with the U.S. DOT, it must turn to the federal courts for review." Id at Page 362.

In addition, the State Courts of Ohio have addressed a similar question in *Central Ohio Waterproofing Company v. Smith,* 521 N.E. 2d 1133, (Court of Appeals of Ohio, 1987). That case involved the decertification of a contractor and the decertified contractor argued that since the decision was made by the Ohio Department of Transportation that it was therefore an administratively final decision of the State which was appealable to State Court. The Ohio Court disagreed. The Court stated that the whole reason for certification by the State Department of Transportation was created by Federal Regulations. Since Federal Regulations explicitly provided that an appeal from a State Department of Transportation's decision not to certify a firm may be made under 49 CFR 23.55 the Court held that the proper method of appealing the State's decision would be to the United States Department of Transportation under that provision of the Code of Federal Regulations and not to the State Court. The Ohio Court also noted that after the plaintiff had exhausted its appeal with the United States Department of Transportation that further Court action to review the United States Department of Transportation's decision must be brought to Federal Court, not to State Court.

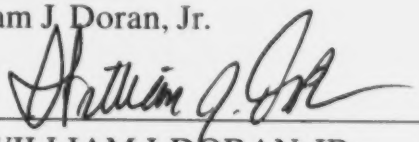
The existence of the right to appeal to the United States Department of Transportation makes it clear that the Federal laws and regulations have set out the procedure for appealing from any decision under the Disadvantaged Business Enterprise Program and that the State Courts have no jurisdiction to judicially review a decision not to certify since the final action under the administrative scheme lies with the United States Department of Transportation.

CONCLUSION

It is respectfully submitted that the decision of the Louisiana Court of Appeal, First Circuit, is correct in fact and in law; that the Supreme Court of the State of Louisiana properly denied the Writ Application; and that this application for Writ Certiorari should be denied.

RESPECTFULLY SUBMITTED:

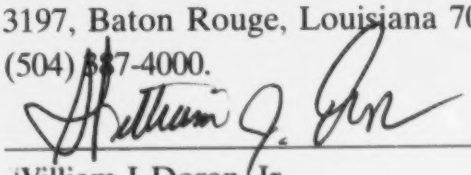
Norman L. Sisson, General Counsel
Sharon F. Lyles
William J. Doran, Jr.

By: 

WILLIAM J. DORAN, JR.
Special Assistant to General Counsel
State of Louisiana, Department of
Transportation and Development
704 South Foster Drive
Baton Rouge, Louisiana 70806-5995
Telephone: (504) 924-4284
Louisiana Bar Roll No. 5020

PROOF OF SERVICE

I, William J. Doran, Jr., attorney for the State of Louisiana, Department of Transportation and Development, Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that three (3) copies of the above Brief in Opposition to Application for Writ of Certiorari, and its Appendices, has been sent this date, United States Mail, postage prepaid and properly addressed to: Southern Slip Form Services, Inc., Applicant in connection with this Petition for Writ Certiorari, through its counsel of record, Mr. Murphy J. Foster, III, Breazeale, Sachse & Wilson, 23rd Floor, One American Place, Post Office Box 3197, Baton Rouge, Louisiana 70821-3197, telephone number (504) 387-4000.

By: 

William J. Doran, Jr.
Louisiana Bar Roll No. 5020

APPENDICES

APPENDIX A

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

P.O. Box 94245, Baton Rouge, Louisiana 70804-9245

NEIL L. WAGONER, P.E., SECRETARY

BUDDY ROEMER, GOVERNOR

July 9, 1990

DB/WBE CERTIFICATION

Mrs. Christina Guillot
Southern Slip Form Services, Inc.
7153 Hickory Grove Road
Deville, Louisiana 71328

Dear Mrs. Guillot:

Your application to the Department of Transportation and Development for certification as a woman business enterprise has been rejected by the certification committee for the reasons stated in our March 7, 1990 letter (copy attached).

THIS DECISION IF (SIC) FINAL AT THE STATE LEVEL.

You may appeal this decision directly to:

Mr. Samuel Skinner, Secretary
Department of Transportation
400 Seventh ST., SW, Room 10200
Washington, D. C. 20590

If you wish to appeal, you must do so no later than 180 days after the date of denial of certification.

A business that is denied certification or recertification by DOTD may not reapply for at least 180 days from the date of the final decision of the panel. A business that appeals to the U.S. Department of Transportation cannot reapply to DOTD until a final decision has been rendered on the appeal.

Sincerely,

/s/Lu Carradine
Compliance Programs Director

LC:fjc

Attachment

cc:FHWA

APPENDIX B

STATE OF LOUISIANA
DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

APPLICATION FOR
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
AND/OR
WOMANS BUSINESS ENTERPRISE (WBE)

Revised May 1, 1989

NEIL L. WAGONER, P.E., SECRETARY

BUDDY ROEMER, GOVERNOR

STATEMENT AND PURPOSE

In an effort to encourage businesses owned and controlled by disadvantaged persons, minorities, or women to participate in transportation-related contracts, Louisiana has developed this certification application to determine whether your firm qualifies for the Disadvantaged Business Enterprise (DBE) Program as established in Part 23, Title 49 of the Code of Federal Regulations. The application is also used to determine the adequacy of your resources for the work in your designated service or product.

Upon receipt of your completed certification application, the department will evaluate the information submitted to determine whether your firm is eligible to participate as a DBE. It is, therefore, imperative that your application and any attached

documentation provide evidence of the ownership and control of your firm. You should also show that your firm has the resources necessary to perform the work you desire. Only those firms which have been certified under this process can be considered for participation in the department's DBE Program.

To discourage abuse in the program, the application is in the form of a *sworn affidavit.* The information requested is for department purposes only and will be kept confidential to the extent allowed by law. Some portions of the certification application and/or documentation may be released under the Freedom of Information Act. ANY FALSE INFORMATION SUBMITTED BY APPLICANTS WILL BE CONSIDERED AS GROUNDS FOR DENIAL/DECERTIFICATION AND FOR PROSECUTION.

We urge you to take advantage of the opportunities offered under this program by filling out the attached application. If you need assistance, or have questions regarding completion of the application, please contact the Compliance Programs Section at (504) 379-1382.

Others May Challenge Your Eligibility For Certification

1. If you are a woman, black, Hispanic, Native American, Asian-Pacific American, or Asian-Indian American you are presumed to be socially and economically disadvantaged. Other persons, knowing of your actual social and economic condition, living standards, success in business, and so forth, have the right to challenge your recognition and certification as a DBE. A procedure exists by which these "third parties" may file such challenge. If your status as a DBE is challenged, you will be given every opportunity to defend yourself. The challenge itself will not affect your status with the department until the challenge has been fully investigated, heard and a *final* determination made.

2. Third parties who have reason to believe that another firm has been wrongly granted certification as DWE/WBE or Joint

Venture, may advise the department's Certification Committee through the Compliance Programs Office at (504) 379-1382.

A Final Word

The department's certification process is designed for your benefit. Its purpose is to ensure that only bona fide small, socially and economically disadvantaged and women businesses benefit from this program.

STATE OF LOUISIANA
DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

P.O. BOX 94245
BATON ROUGE, LOUISIANA 70804-9245

HOW TO APPLY FOR DOTD CERTIFICATION

Step A. There are two different "Schedules" or application forms available to your firm. They are Schedule A and Schedule B.

1. *Schedule A,* which is attached, must be completed by all companies, firms and truck owner-operators wanting to be certified as a Disadvantaged Business Enterprise (DBE) or as a Woman Owned Business Enterprise (WBE). All questions *must* be answered. All attachments listed in Item 25 appropriate to your firm *must* be attached to the Schedule A.

2. *Schedule B* must be completed by all firms seeking joint venture certification for one specific project. DBE and WBE firms participation in a joint venture must also have an approved Schedule A or submit a Schedule A with the Schedule B. Schedule B may be requested from the Compliance Programs Section.

Step B. When you have decided which schedule matches your situation:

Fill out the form carefully and completely, sign it, have it notarized and send it to:

Department of Transportation and Development
P. O. Box 94245
Baton Rouge, LA 70804-9245
Attention: Compliance Programs Section

Questions that do not apply to your firm should be marked N/A in the space provided. All questions must be answered and the requested documents submitted to he department along with the application. Failure to do this will delay the processing of your application.

If you have additional information that is not requested in the application and will help prove that your firm is eligible, please attach it to your application.

The Certification Process

1. Your application is reviewed by the Compliance Programs Office to see that it is complete and additional information may be requested from you at that time.

2. A representative from the Compliance Programs Section will contact you to schedule an on-site review of your firm. Whenever possible, an on-site review will be conducted prior to your firm's review by our certification committee.

3. The department's Certification Committee will evaluate the information contained in your application, along with facts learned during the on-site review and determine if your firm meets the definition of a DBE or WBE or, perhaps both.

4. You will be notified of the Certification Committee's decision by letter. If your application is approved and you have been certified as a DBE or WBE or both, your company will be added to the department's list of Certified DBEs or WBEs. The list will show your firm's name, address, telephone number, and name of the contact person in your firm. It will also give a brief description of the type of work you are certified to do.

4. (sic) If you are denied certification, you may first appeal to the Certification Committee for review of your file.

Final Rejection

If your application for certification is not approved following a review by the committee, you may appeal that decision. To appeal you *must write a letter,* giving the reason(s) you feel that you should be certified, and send the letter to:

Secretary
U.S. Department of Transportation
400 Seventh St., SW
Room 10200
Washington, D.C. 20590

You must file your appeal no later than 180 days from the date you were notified that your application for certification was denied.

INSTRUCTIONS. All information requested in this schedule is required to be submitted. If an item does not apply to you or your firm, mark "N/A." CERTIFICATION WILL NOT BE GRANTED ON INCOMPLETE INFORMATION.

Firms not located in Louisiana should provide evidence of certification by the state highway agency of their home state. Corporations must attach copies of articles of incorporation, bylaws, stock certificates and minutes of meetings held by the corporation which establish the authority and responsibilities of its officers.

DEFINITIONS. A Disadvantaged Business Enterprise (DBE) is a small business which is at least 51 percent owned by one or more socially and economically disadvantaged individuals inclusive of women or which, in the case of a publicly owned business, has at least 51 percent of the stock owned by one or more socially and economically disadvantaged individuals, and whose management, policies, and major decisions and day-to-day decisions on matters of management, policy, and operations are controlled by one or more of the socially and economically disadvantaged individuals who have ownership in the firm.

Socially and economically disadvantaged individuals are citizens of the United States (or lawfully admitted permanent residents) who are:

- Women
- Black Americans
- Hispanic Americans
- Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians)
- Asian-Pacific Americans (persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Phillipines, Samoa, Guam, the U.S. Territories of the Pacific and the Northern Marianas), and
- Asian-Indian Americans (persons whose origins are from India, Pakistan, and Bangladesh)

and who are regarded by their respective minority community as a member of that particular minority group. Any other U.S. citizen who is found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act may be regarded as a socially and economically disadvantaged individual.

Certification as a Woman Business Enterprise entitles a firm to participate as a Disadvantaged Business Enterprise unless otherwise indicated.

SCHEDULE 'A'
INFORMATION FOR DETERMINING
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
AND/OR
WOMAN BUSINESS ENTERPRISE (WBE)

ELIGIBILITY
PURSUANT TO 49 CFR, PART 23

PROVIDED TO
THE DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
STATE OF LOUISIANA

BY
SOUTHERN SLIP FORM SERVICES, INC.
Date: 12/29/89

SUBMIT APPLICATION TO:
Department of Transportation and Development
P.O. Box 94245, Capitol Station
Baton Rouge, Louisiana 70804-9245
Attention: Compliance Programs Section

DBE/WBE CERTIFICATION APPLICATION

Certification will not be granted on incomplete information.

Note: If after filing this application, and prior to the expiration of your certification, there is a change in the ownership and/or management of this, you must submit a new certification application within two (2) weeks after the change. Failure to comply with this requirement will lead to a loss of certification.

Certification status desired:

☐ Disadvantaged Business Enterprise (DBE)
☒ Woman Business Enterprise (WBE)
☐ Both DBE/WBE

Name of Firm: Southern Slip Form Services, Inc.

Street Address of Firm: 7153 Hickory Grove Road

City, State and Zip Code: Deville, LA 71328

Mailing Address of Firm: Same as Above

City, State and Zip Code: Same as Above

Phone Number of Firm: (318) 466-3177

Contact Person: Christina Guillot

Title: President

Phone Number: (318) 253-5792

1. List other business names previously used: NONE
2. Is your firm currently certified by the Small Business Administration (SBA) under the 8(a) program? Yes ☐ No ☒
   If yes, submit a copy of your SBA certification letter.
3. Give beginning date of firm: July 27, 1988
4. Legal Structure:
   a. Sole proprietorship ☐
   b. Corporation ☒
   c. Partnership ☐
   d. Joint Venture ☐
   e. Other Business Entity ☐ Specify _____
5. Has your firm applied for reorganization under Chapter 11 and/or liquidation under Chapter 7, within the last three years? Yes ☐ No ☒
6. OWNERSHIP - Identify all individuals or holding companies and list their cash, equipment, and/or real estate investment in the firm; *and* attach the documentation of the source of these investments. (If additional space is required, submit an attached sheet.) Resumes of each owner must be attached.

   Name: Trudy T. Belgard Title: Secretary-Treasurer

Race/Ethnic Origin: White Sex: Female
Years of Ownership: 1
Ownership and Voting Percentages: 60%/60%
Initial investment to acquire ownership in firm:
Money - $6,000
Equipment - $ ____
Real Estate - $ ____
Name: Christina B. Guillot Title: President
Race/Ethnic Origin: White Sex: Female
Years of Ownership: 1
Ownership and Voting Percentages: 40%/40%
Initial Investment to acquire ownership in firm:
Money - $4,000
Equipment - $ ____
Real Estate - $ ____

7. CONTROL

CAREFULLY COMPLETE THE ITEMS OF CONTROL LISTED BELOW. Indicate management personnel who control the firm in the following areas (Attach work experience resumes - include dates of employment at each company for each person).

Financial Decisions: Responsibility for check signing; acquisition of lines of credit; loans, surety bonding; supplies, etc.

Person(s) Responsible	Title	Race/Sex
Trudy Belgard	Secretary-Treasurer	W/F
Christina Guillot	President	W/F

Estimating: Cost estimates, bid preparation, or negotiations.

Person Responsible	Title	Race/Sex
Christina Guillot	President	W/F

Hiring/Firing of Management Personnel:

Person(s) Responsible	Title	Race/Sex
Trudy Belgard	Secretary-Treasurer	W/F
Christina Guillot	President	W/F

Field/Production Operations Supervisor: Site supervision/ scheduling; project management services.

Person Responsible	Title	Race/Sex
Christina Guillot	President	W/F

Contract Signature Authority: Contract execution, bid submission.

Person(s) Responsible	Title	Race/Sex
Trudy Belgard	Secretary-Treasurer	W/F
Christina Guillot	President	W/F

Office Management:

Person(s) Responsible	Title	Race/Sex
Trudy Belgard	Secretary-Treasurer	W/F
Christina Guillot	President	W/F

Marketing/Sales:

Person Responsible	Title	Race/Sex
Christina Guillot	President	W/F

Purchasing of Major Equipment:

Person(s) Responsible	Title	Race/Sex
Trudy Belgard	Secretary-Treasurer	W/F
Christina Guillot	President	W/F

8. Identify officers *(work experience resumes of each person must be attached).* Additional sheets may be attached.

Name	Title	Race/ Sex	Date Appointed
Trudy T. Belgard	Secretary-Treasurer	W/F	7/27/88
Christina B. Guillot	President	W/F	7/27/88

9. Identify current Board of Directors *(work experience resumes of each person must be attached).* Additional sheets may be attached.

Name	Title	Race/ Sex	Date Appointed
Trudy Belgard	Secretary-Treasurer	W/F	7/27/88
Christina Guillot	President	W/F	7/27/88

OPERATIONS

10. List the three largest projects in dollar amounts completed by your firm during the past three years.

    N/A

11. List all active jobs on which this firm is currently working.

    None.

12. Attach a list of construction equipment and/or vehicles in possession or under your control (indicate separately), and a list of office equipment, office space (owned or leased), and storage space (owned or leased), including signed leased agreements.

13. Identify persons or firms who provide the following services:

    External Management or Technical/Computer Services:

    Firm Name: N/A

    Phone:

    Address:

    Contact Person:

    Accountant

    Firm Name: Cenla Accounting & Tax Service

    Phone: (318) 640-2283

    Address: 707 Shanghai Road, Pineville, LA 71360

    Contact Person: Doug Stedman

    Attorney

    Firm Name: Terrell and Aymond

    Phone: (318) 445-6278

    Address: 810 Main Street, Pineville, LA 71360

    Contact Person: Gregory Aymond

    Principal Suppliers (Materials and Equipment)

    Firm Name: N/A Phone:

    Address:

    Contact Person:

14. List firm's current licenses (contractors, engineering, etc.) Copy of license required.
    Classification(s): Louisiana Contractors License (Highways, Streets, and Bridges)
    Qualifying Party for exam: Christina Guillot
15. Provide the following banking information:
    Bank Name: First Bank Phone: (318) 473-6930
    Address: 1412 Jackson Street, Alexandria, LA 71301
    Contact Person: Robert Levens
16. Who are the authorized signatures on this firm's checking account? Trudy Belgard and Christine Guillot
17. What is your firm's current working capital? $49,377.21
18. Does your firm have a secured line of credit? Yes ☐ No ☒
    If yes, provide a copy of the letter showing the source and amount extended.
19. If your firm has bonding capabilities complete the following:
    Agent Broker: N/A Phone:
    Address:
    Bonding Limit:
20. Provide a copy of your firm's *entire* corporate income tax returns for the last three years. Below specify the gross receipts for the last three years.
    Year ending: December 31, 1988 Total Receipts: 0
21. Has this firm or any of its owner, board of directors, officers, or management personnel been denied DBE certification or decertified previously? Yes ☒ No ☐
    If yes, indicate the state, name of agency, and date:
    Louisiana; Department of Transportation and Development; October 4, 1988
22. Provide a listing of the salaries of each of the owners.
    Owners not yet drawing salaries.
23. How many full and part-time employees does your firm have?
    Full Time: 2 Part-time: 0

24. Nature of firm's business. Check the type of work which makes up 75% or more of the dollar volume of work done by your firm. If this is a new firm check the items of work you intend to perform. If move than one item is checked, give the percent of total dollar volume earned or anticipated to be earned for each item.

    Southern Slip-Form Services is licensed to perform every part of road and bridge construction. The percentage of income from each will be determined by amount of available work under each subsection and how successful we will be as a WBE certified corporation in bidding and negotiating work under each subsection.

25. Submit the following documents with this application. Place the mark "X" in the blank opposite each item you submitted:

    PART I. *FOR A CORPORATION:*

    - ☒ a. Current financial statement prepared by an independent CPA or accountant (last 6 months).
    - ☒ b. Resumes of principals of your company showing education, training, and employment with dates.
    - ☒ c. License to do business in Louisiana.
    - ☒ d. Articles of incorporation, and all addendum, including date approved.
    - ☒ e. Minutes of first corporate organizational meeting.
    - ☒ f. Corporation By-Laws.
    - ☒ g. Copy of stock certificate(s) issued (not a specimen copy) to all stockholders.
    - ☐ h. Stock transfer ledger.
    - ☒ i. Proof of stock purchase such as cancelled checks.
    - ☐ j. Copies of third party agreements, such as lease, rental or management service agreements, etc.
    - ☐ k. If a "Foreign Corporation," copy of authority to do business in Louisiana.
    - ☒ l. Proof of minority status (see Page 18).
    - ☒ m. Report of *Gross Receipts* submitted to the Internal Revenue Service.

☐ n. Furnish copies of agreements relating to:
- Stock options
- Ownership agreements
- Stockholder agreements
- Restrictions on disposal of stock loan agreements
- Stockholder voting rights
- Ownership of voting securities

PART II. *FOR A PARTNERSHIP AND SOLE PROPRIETORSHIP:*

☐ a. Current financial statement prepared by an independent CPA or accountant.

☐ b. Resumes of principals of your company showing education, training and employment with dates.

☐ c. License to do business in Louisiana.

☐ d. Partnership agreement.

☐ e. Buy out rights agreement.

☐ f. Profit sharing agreement.

☐ g. Proof of capital invested.

☐ h. Proof of minority status (see Page 18).

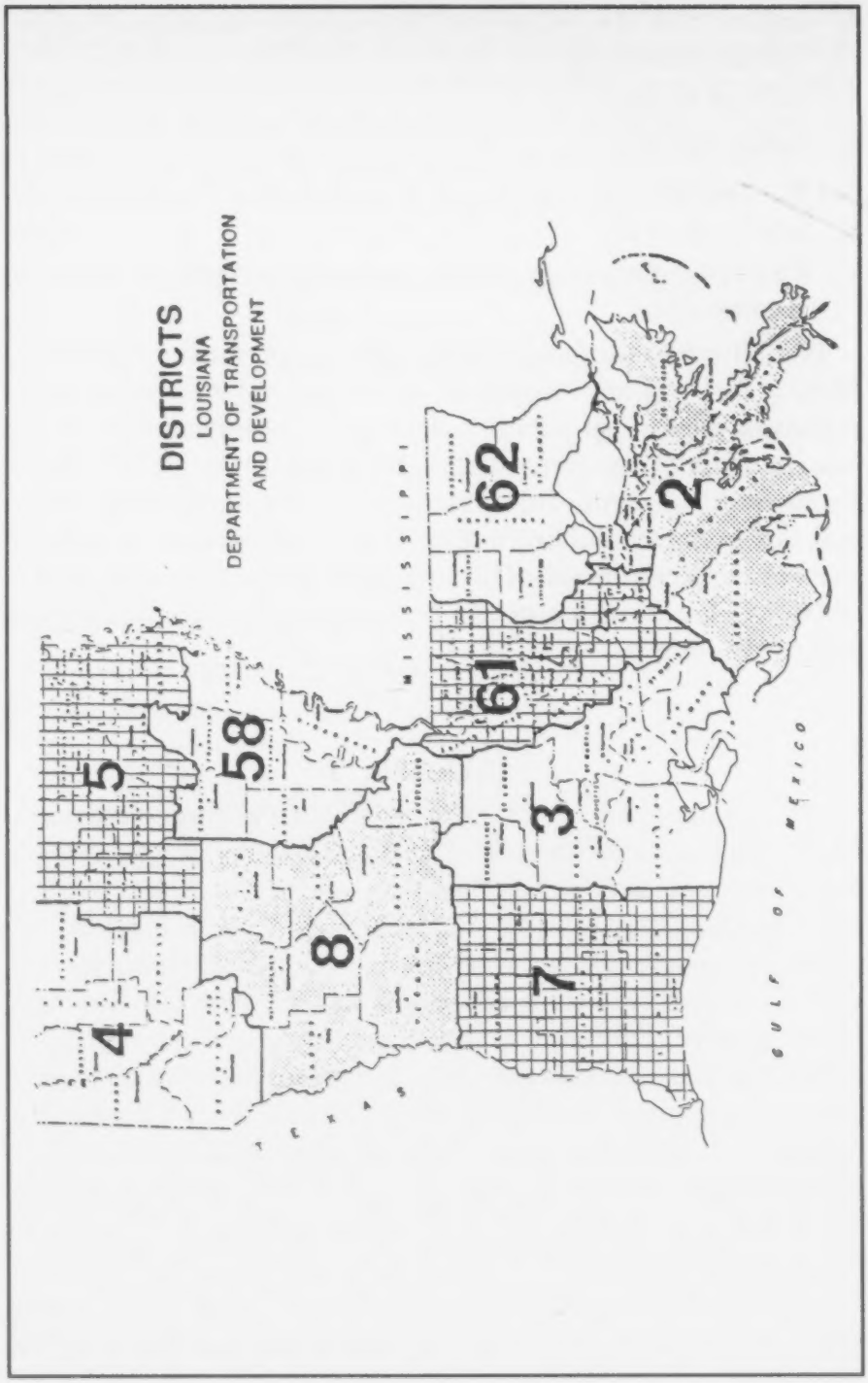
☐ i. Report of Gross Receipts submitted to the Internal Revenue Service.

26. Using the map attached, please check the geographic areas your firm will be willing to work in.

☐ 02	☐ 08
☐ 03	☐ 58
☐ 04	☐ 61
☐ 05	☐ 62
☐ 07	☒ STATE WIDE

ACCEPTABLE EVIDENCE OF MINORITY STATUS

1. Birth certificate
2. Naturalization papers
3. Passports


DISTRICTS
LOUISIANA
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT
MISSISSIPPI
62
2
61
58
5
3
8
7
4
GULF OF MEXICO

4. Indian tribal roll, tribal voter registration certificate, or other *official* documents
5. Drivers license
6. School records
7. Medical records
8. Service records
9. Proof of membership and interaction in recognized minority organizations.

In addition to those items listed above, you must submit verification that you are recognized in the particular minority community as a minority. Submit a notarized statement from a bona fide member of the community who is not a relative and not a member of this firm. This statement should attest to knowing you as a minority and knowing you to be recognized as such by that minority community. (Because of their special status, proof of Native American status can be accepted only in the form of *official documents).*

AFFIDAVIT

The undersigned swears or affirms that the foregoing statements are true and correct and include all material information necessary to identify and explain the operation of Southern Slip-Form Services, Inc. as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor, or, directly to the Louisiana Department of Transportation and Development, complete and accurate information regarding actual changes, if any, to the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements and fraud.

That the business/firm agrees to comply with the requirements set forth in 49CFR23, the department's DBE Program

and the department's DBE Implementation Guide. Furthermore, the applicant agrees to furnish all requested information which the department deems necessary in order to make an accurate determination on this firm's eligibility. Failure to comply with these rules and regulations could result in the decertification of your firm or other sanctions deemed necessary.

Signature: s/Christina B. Guillot
Title: President
Date: December 29, 1989

Notary Seal

Subscribed and sworn to before me
this 29 day of December 1989
Signed: s/ Finis L. Duff
Parish of: Rapides State: La
My Commission Expires: 26 Jan 91

Witness: s/ Ronnie L. Duff
Witness: s/ Johnna Haynes

APPENDIX C

STATE OF LOUISIANA
DIVISION OF ADMINISTRATION

504-342-5015
LINC 421-5017

BUDDY ROEMER, GOVERNOR

DENNIS STINE, COMMISSIONER

November 19, 1990

Mr. Steven Loeb
Breazeale, Sachse and Wilson
Post Office Box 3197
Baton Rouge, Louisiana 70821

Dear Mr. Loeb:

This is to certify that according to our records there have been no rules promulgated by the Louisiana Department of Transportation and Development pertaining to Disadvantaged Business Enterprise or Women's Business Enterprise Programs.

If our office can be of further assistance to you please feel free to call on us.

Sincerely,

/s/Nancy Midkiff (KMB)
Director

NM/kmb